

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JAMES DULAK,

Plaintiff,

Case No. 14-10193
Honorable Denise Page Hood

v.

CORIZON, INC., et al.,

Defendants.

/

**ORDER ACCEPTING REPORT AND RECOMMENDATION AS TO
PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING
ORDER/PRELIMINARY INJUNCTION**

This matter is before the Court on Magistrate Judge Michael J. Hluchaniuk's Report and Recommendation to deny Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction filed June 9, 2014. (Doc. No. 56) Plaintiff James Dulak filed Objections to the Report and Recommendation on August 1, 2014.

The standard of review by the district court when examining a Report and Recommendation is set forth in 28 U.S.C. § 636. This Court "shall make a *de novo* determination of those portions of the report or the specified proposed findings or recommendations to which an objection is made." 28 U.S.C. § 636(B)(1)(c). The Court "may accept, reject or modify, in whole or in part, the findings or recommendations made by the Magistrate." *Id.* In order to preserve the right to

appeal the Magistrate Judge's recommendation, a party must file objections to the Report and Recommendation within fourteen (14) days of service of the Report and Recommendation. Fed. R. Civ. P 72(b)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Secretary of Health and Human Servs.*, 932 F2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

The Court agrees with the Magistrate Judge that after weighing the factors relevant to determining whether preliminary injunctive relief should be issued, Plaintiff has not shown that he is entitled to injunctive relief at this time. Plaintiff in his Objections essentially disagrees with the treatment or lack of treatment he is receiving from the Defendants. Although Defendants agree that the record shows Plaintiff does have medical issues, courts have recognized that the courts are ill-equipped to micro-manage prison medical treatment. See, *Westlake v. Lucas*, 537 F.2d 857, 860 n. 5 (6th Cir. 1976). The Court agrees with the Magistrate Judge that Plaintiff's arguments reflect Plaintiff's disagreement with Defendants over the proper medical treatment and the necessity for different medication. As noted by the Magistrate Judge, courts have held that a difference of opinion regarding treatment fails to state a claim under the Eighth Amendment. See *Saedeh v. Hemingway*, 37 Fed. Appx. 194, 195 (6th Cir. 2002); *Chapman v. Parke*, 1991 WL 203080, at *2 (6th

Cir. Oct. 4, 19917). The Court further agrees with the Magistrate Judge that at this stage of the proceedings, Plaintiff has not made a substantial showing of deliberate indifference to a serious medical need which demonstrates the likelihood of success on the merits factor.

The Court also agrees with the Magistrate Judge that Plaintiff has not set forth specific facts showing an immediate, concrete and irreparable harm in the absence of an injunction. The record currently shows that Plaintiff is receiving treatment by the medical staff, even though Plaintiff disagrees with the treatment currently being given by the staff. As to the substantial harm to others, the Magistrate Judge identified the interest of the MDOC in promulgating and enforcing prison regulations, including reasonable rules involving prisoner health care. The Magistrate Judge noted the public interest in ensuring the medical care of prison inmates and having a well-regulated and operated prison system.

After considering the Report and Recommendation and the parties' submissions, the Court agrees with the Magistrate Judge that Plaintiff has not established that he is entitled to preliminary injunctive relief. The Court accepts the Magistrate Judge's recommendation that neither a temporary restraining order nor a preliminary injunction should be issued at this time.

Accordingly,

IT IS ORDERED that Magistrate Judge Michael J. Hluchaniuk's Report and Recommendation (**No. 56**) is ACCEPTED and ADOPTED as this Court's findings of fact and conclusions of law.

IT IS FURTHER ORDERED that Plaintiff's Motion for Temporary Restraining Order and Motion for Preliminary Injunction (**No. 4**) are DENIED.

IT IS FURTHER ORDERED that Plaintiff's Motion to Extend the Time to File Objections to the Report and Recommendation (**No. 58**) is GRANTED.

IT IS FURTHER ORDERED that Plaintiff's Objections (**No. 61**) is OVERRULED.

S/Denise Page Hood

Denise Page Hood
United States District Judge

Dated: September 18, 2014

I hereby certify that a copy of the foregoing document was served upon counsel of record on September 18, 2014, by electronic and/or ordinary mail.

S/LaShawn R. Saulsberry

Case Manager